



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 19, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-15

Jan Witold Baran, Esq.
Caleb P. Burns, Esq.
Wiley Rein, LLP
1776 K Street, N.W.
Washington, D.C. 20006

Dear Messrs. Baran and Burns:

We are responding to your advisory opinion request on behalf of GMAC LLC (“GMAC” or “Requestor”), regarding whether, under the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations, GMAC may pay for the administrative and solicitation costs of a separate segregated fund (“SSF”) to be established by a GMAC subsidiary corporation, and whether the SSF may be named “GMAC LLC PAC.”

The Commission does not reach a conclusion as to whether GMAC may pay the administrative and solicitation costs for the SSF of its corporate subsidiary. However, the SSF may include the name “GMAC LLC” in the name of the SSF, and may use the abbreviation “GMAC PAC.”

Background

The facts presented in this advisory opinion are based on your letter received on July 31, 2007, and telephone conversations on September 4, 2007.

GMAC is a financial services company that primarily operates in the automotive finance, mortgage, and insurance lines of business. GMAC has elected partnership status

in its filings with the Internal Revenue Service (“IRS”).¹ GMAC is owned 49% by General Motors, Inc., and 51% by FIM Holdings LLC.² FIM Holdings LLC is an investment consortium led by Cerberus FIM Investors, LLC (“Cerberus”), its sole managing member, and several corporate principals including Citigroup Inc., Aozora Bank Ltd., and a subsidiary of the PNC Financial Services Group, Inc.³ FIM Holdings LLC has filed an election with the IRS to be treated as a partnership. The Requestor represents that information about the IRS election of Cerberus is not available.

GMAC owns a number of subsidiaries, one of which is GMAC Insurance Holdings, Inc. (“GMAC Insurance”), an incorporated insurance company. GMAC Insurance intends to establish an SSF. GMAC would like to use its own personnel and resources to administer the SSF, including paying the administrative and solicitation expenses of the SSF, which GMAC proposes to name “GMAC LLC PAC” and abbreviate as “GMAC PAC.”

Questions Presented

1. *May GMAC use its own resources to pay the expenses associated with administering the SSF of its corporate subsidiary?*
2. *May the SSF be named “GMAC LLC PAC” and use “GMAC PAC” as an abbreviation?*

Legal Analysis and Conclusions

1. *May GMAC use its own resources to pay the expenses associated with administering the SSF of its corporate subsidiary?*

The Commission does not reach a conclusion on this issue.⁴

¹ Although the New York Stock Exchange listings include “GMAC LLC PINES,” the Requestor has confirmed that the stock of GMAC LLC is not itself publicly traded, and that GMAC LLC is not treated as a corporation under 26 U.S.C. 7704 (“certain publicly traded partnerships treated as corporations”).

² See GMAC LLC Form 10-Q Quarterly Report to the SEC for the period ending June 30, 2007, p. 6, available online at

<http://www.sec.gov/Archives/edgar/data/40729/000095013407017059/k17109e10vq.htm>.

³ *Id.*

⁴ Partnerships and LLCs that are treated as partnerships are generally prohibited from serving as the connected organization of an SSF. An exception to this general rule is available to partnerships that are owned entirely by corporations. See e.g. Advisory Opinions 2004-42 (Pharmavite) (LLC treated as partnership was permitted to serve the function of an SSF's connected organization because LLC was wholly owned by a corporation), 2003-28 (Horizon Lines) (LLC treated as a partnership was permitted to serve the function of an SSF's connected organization because LLC was “owned entirely by corporations” where it was owned by two corporations and another LLC treated as a partnership, which was itself owned by a corporation). As indicated above, the tax status of Cerberus has not been made available by the Requestor and, accordingly, some Commissioners concluded that they did not have sufficient information to determine whether GMAC is “owned entirely by corporations.” Some Commissioners, however, concluded that the exception described above for partnerships owned entirely by corporations did not necessarily provide the appropriate analysis under the facts presented in the instant advisory opinion.

2. *May the SSF be named “GMAC LLC PAC” and use “GMAC PAC” as an abbreviation?*

The SSF may include GMAC LLC in its name and may use GMAC PAC as an abbreviation.

The Act and Commission regulations require the name of an SSF to include the name of its connected organization.⁵ *See* 2 U.S.C. 432(e)(5) and 11 CFR 102.14(c). The name of the SSF’s connected organization here would be GMAC Insurance Holdings, Inc. The Act and Commission regulations do not, however, preclude the addition of “GMAC LLC,” the name of the connected organization’s parent, to the name of the SSF. *See* 11 CFR 102.14 (The name of the SSF “shall include” the full name of its connected organization, but an SSF established by a subsidiary “need not” include the name of its parent or another subsidiary.)

For example, in Advisory Opinion 1989-08 (Wagner & Brown), the Commission concluded that an SSF could include the name of a partnership affiliated with the SSF’s connected organization, even though the partnership did not qualify as a connected organization of the SSF and the inclusion of the partnership’s name was not required. In that advisory opinion, the Commission approved use of the name “Insilco Corporation/Wagner & Brown Political Action Committee” for the SSF. *See* Advisory Opinion 1989-08. Similarly, here, the SSF could be named, for example, “GMAC Insurance Holdings, Inc. / GMAC LLC Political Action Committee.”

Commission regulations also permit an SSF to use a “clearly recognized abbreviation or acronym by which the connected organization is commonly known.” 11 CFR 102.14(c). In determining whether specific terms or names meet this requirement, the Commission has examined whether they give adequate notice to the public as to the identity and sponsorship of the SSF. *See* Advisory Opinions 2004-04 (AirPAC), 2000-34 n.4 (SAPPI Paper), 1987-26 (Principal Mutual), and 1980-23 (ADEPT).

Here, the name “GMAC PAC” would reflect both the name of the SSF’s connected organization, GMAC Insurance Holdings, Inc., and its parent, GMAC LLC. Thus, the abbreviation “GMAC” would appear to give adequate notice to the public as to the identity and sponsorship of this particular SSF. The SSF must use both the abbreviation or acronym and the SSF’s full name in its Statement of Organization, in all reports filed with the Commission, and in disclaimer notices on communications to the general public. 11 CFR 102.14(c); *see also* 11 CFR 109.11 and 110.11. The SSF need

⁵ In Advisory Opinion 2004-42 (Pharmavite), Otsuka America, Inc. (OAI) was the connected organization for an SSF, and Pharmavite LLC was a wholly-owned subsidiary of OAI. The Commission permitted the SSF to substitute the name “Pharmavite LLC PAC” in place of the name of the connected organization, OAI, where the Commission had previously concluded that Pharmavite could perform the functions of a connected organization (*i.e.*, pay the establishment and administrative costs for the SSF). *See also* Advisory Opinion 2003-28 (Horizon Lines). The Commission has not reached a conclusion on this issue under the facts presented in the instant advisory opinion.

not use its full name, however, when it solicits contributions to the SSF or when it makes contributions. 11 CFR 102.14(c); Explanation and Justification for 102.14(c) at 45 Fed. Reg. 15080, 15085 (Mar. 7, 1980); 11 CFR 110.11(f)(2) (An SSF's communication to its solicitable class need not include a disclaimer); *see also* Advisory Opinions 2004-42 (Pharmavite), 2004-04 (AirPAC), 2000-34 (SAPPI Paper), and 1987-26 (Principal Mutual).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the Requestor may not rely on that conclusion as support for its proposed activity. All cited advisory opinions are available on the Commission's website at www.fec.gov.

Sincerely,

(signed)

Hans A. von Spakovsky
Commissioner